

(i) the suit or proceeding was instituted without any probable cause; (ii) the motive in instituting the suit was malicious, which was often defined in this context as without probable cause and for a purpose other than bringing the defendant to justice; and (iii) the prosecution terminated in the acquittal or discharge of the accused.

Id. at 1338 (internal quotation marks omitted). To that end, the R&R's basis for recommending the grant of Defendants' motion on this issue is incorrect. It is, however, correct in its recommended outcome. As the R&R sets forth, and the Court adopts, there was probable cause to arrest the Plaintiffs in this action. *See* R&R at 15–17 (Mr. Everard's arrest); R&R at 18–19 (Mr. Grisham's arrest). Accordingly, the Defendants have demonstrated that they are entitled to judgment as a matter of law on Plaintiffs' malicious prosecution claims. *Thompson*, 142 S. Ct. at 1338. The R&R is accepted in all other respects.

Accordingly, **IT IS ORDERED** that Magistrate Judge Bemporad's Report and Recommendation is **ACCEPTED IN PART** and **MODIFIED IN PART** as set forth above.

It is **FURTHER ORDERED** that Defendants' Motion for Summary Judgment, Dkt. No. 81, is **GRANTED**.

It is **FURTHER ORDERED** that Plaintiffs' Motion for Partial Summary Judgment, Dkt. No. 82, is **DENIED**.

It is so **ORDERED**.

SIGNED this 20 September, 2022



ORLANDO L. GARCIA
CHIEF UNITED STATES DISTRICT JUDGE